

**Remarks/Arguments:**

**Introduction**

Claim 71 has been amended to include, *inter alia*, the limitations of claim 72 and to further describe the deformable body and the dispensing apparatus. Claim 72 has been canceled. Claim 103 has been amended to further describe the sealing system. Claims 89 and 90 have been non-narrowingly amended. Claim 155 has been added. Support for newly added claim may be found in previously presented claim 71, but claim 155 is more particularly directed to a beverage dispensing system. Claims 104-154 are canceled without prejudice.

No new matter is introduced with these amendments. Entry of the amendments is respectfully requested.

**Allowable Subject Matter**

Claims 78, 79 and 91 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants thank the Examiner for this statement of allowable subject matter.

**Section 102 Rejections**

Claims 71, 73-77, 81 and 103 are rejected under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent Application Publication No. 2004/0112222 to Fischer (hereinafter "Fischer"). Applicants respectfully traverse.

Fischer relates to an espresso-brewing device of the type, which is well known in the market under the name "Nespresso". In this well-known espresso-brewing device, single serving capsules are used, which contain coffee powder. The capsule is pierced by a capsule piercer (6). The capsule piercer (6) has brewing water supply channels (42) for injecting brewing water into

the capsule. The brewing water is injected at a pressure of 10 to 15 bar and at a temperature of approximately 96°C. Thus, the coffee powder is moistened and put under pressure. Only after an inner pressure of approximately 6 bar has been reached, the membrane forming the base of the capsule is pressed against pyramid-shaped profile (50) of the contoured plate and the membrane (13) is pierced. Thus, the brewing water can permeate the coffee powder and flow out via the draining holes (51) of the pyramid plate (13) and the outlet opening (44) of the brewing unit

Please note that this espresso-brewing device injects water into the capsule under high pressure and high temperature whereby the internal pressure in the capsule is raised, whereas, by contrast the container according to the present invention is internally pressurized by compressing the container body. No piercing of the container takes place in the device according to the present invention.

The capsules of the Fischer brewing capsules do not contain a liquid substance which is ejected from the capsule. It contains a dry coffee powder which is moistened and which is used to brew the coffee. The moistened coffee powder of Fischer remains in the capsule. To ensure that the coffee powder remains in the capsule, the pyramid plate of Fischer is necessary which serves in combination with the membrane as a sort of filter that allows only the brewed coffee to pass. By contrast, the present invention proposes a container which contains a substance, which substance is ejected from the container by compressing the container body.

Thus, contrary to the Fischer brewing system, the kit according to the present invention does not brew a beverage, but prepares the beverage by post-mixing a substance (concentrate) with water in, e.g. a drinking cup. According to the present invention, the substance is ejected from the container in the same state as when the container was filled.

Yet another difference between the kit according to the present invention and the system according to Fischer is that the capsule according to the present invention has a covering sheet

(foil) sealed to a circumferential rim of the container body by means of a circumferential sealing seam. The circumferential sealing seam has a weakened zone (claims 71 and 155) where the sealing seam breaks when a certain threshold pressure is reached upon compressing the preformed container body. When the weakened zone breaks, the fluid substance is expelled from the container. In Fischer on the other hand, the membrane is pierced by the pyramid plate (13), by which the brewed coffee can flow out of the capsule.

In claim 103 of the present application is mentioned that the dispensing device has a cover with a recess in which the cover sheet is allowed to bulge out locally upon pressurization of the content of the container. The recess in the covering lid is located over a portion of the circumferential sealing seam of the container such that the circumferential sealing seam between the covering sheet and the circumferential rim is allowed to break (rupture) at that specific location. This feature is not disclosed in Fischer.

Thus, Fischer fails to disclose, teach or suggest the present invention as currently defined by claims 71, 73-77, 81 and 103. Reconsideration and withdrawal of the rejections of claims 71, 73-77, 81 and 103 are respectfully requested.

### **Section 103 Rejections**

Claims 71, 72, 75-77, 80, 82, 83, 85-90, 92-95, and 99-95 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent No. 4,915,261 to Strenger (hereinafter "Strenger") in view of U.S. Patent No. 7,607,385 to Halliday et al. (hereinafter "Halliday"). Applicants respectfully traverse.

#### **Strenger**

Strenger discloses a beverage dispensing device in which a concentrate is dispensed from a pouch type container. The concentrate is mixed within the apparatus with water to prepare a beverage.

As background art, Strenger comes closest to the present invention. Strenger is a divisional of U.S. Application No. 14,927, filed February 13, 1987. European Application Publication EP 278 773 A2 claims priority to this divisional application. This equivalent Strenger European patent application is described in the second paragraph of the description of the present application.

However, there is an important difference between Strenger and the present invention. This difference between Strenger and the present invention, i.e., amended claims 71 and 155, is that, *inter alia*, the container according to the present invention has a generally cup-shaped preformed body, whereas the container according to Strenger is of the so-called "pouch-type".

The container according to the present invention has a preformed deformable cup-shaped body defining a filling cavity which is filled with a flavoring substance. At the upper end, the body of the present invention has an opening which is surrounded by an integral planar circumferential rim. The opening is closed by a cover sheet which is sealed to the circumferential rim by a circumferential sealing seam. The container according to the present invention has a preformed body and a cover sheet sealed over it. This allows the container which is filled with substance to be produced by a so-called form, fill and seal process (FFS) which in terms of efficiency and costs is an advantageous production method. A general description of an FFS process is found in paragraph [0149] of the publication of the present application.

As will be appreciated the pouch type container disclosed Strenger is made up of flexible sheets which are not preformed. The sheets have to be sealed together to define a sealed chamber for containing a predetermined quantity of the flavoring constituent such as soft drink syrup (see Strenger, column 4, line 40-45). Thus, the flexible sheets of plastic material have to be sealed together before the pouch can be filled with a flavoring constituent. Of course, at one position the seal must still be opened in order to be able to inject the flavoring constituent. After the flavoring constituent has been injected into the chamber, the missing seal can be made in order to fully close the pouch.

From the above it is clear that using a preformed generally cup-shaped body, in which a filling cavity is preformed which is defined in the present application is different from using a pouch as is disclosed in Strenger. A pouch and a preformed body require different manufacturing and filling processes. The gist of the present invention is that one provides a container for dispensing a substance, which can be compressed and which is formed and filled with a form, fill and seal process, which is a relatively cheap and cost effective production manner and which is far more less complex than the production of pouch type containers containing substance. In that regard the pouch type container disclosed in Strenger cannot be considered as a container which is defined by claim 71 or claim 155.

In view of the above, Strenger fails to disclose, teach or suggest the subject matter of amended claim 71 and the new claim 155.

#### Halliday

Halliday discloses a cartridge for preparation of a beverage. The cartridge contains, for example, coffee powder or tea leafs. This cartridge has an inlet for injecting water into the cartridge and an outlet for discharging the prepared beverage. The cartridge has a hard body and a sealing foil which is pierced to inject water inlet channel (260) into the inlet of the cartridge and to connect the outlet with a discharge channel (254) of the dispensing machine (see Figs. 40 - 42)

The cartridge from Halliday and its cooperation with the dispensing apparatus is totally different from the container and dispensing apparatus according to the present invention. Thus, Halliday fails to disclose, teach or suggest the present invention as set forth in claims 71, 103 and 155 of the present invention.

The identification means, however, are known from Halliday.

Combination of Strenger and Halliday

Amended claim 71 and the newly presented claim 155 are not obvious with regard to Strenger in view of Halliday, because, *inter alia*, as is mentioned in the above, Strenger relates to a dispensing system with pouch type containers, whereas the present invention relates to a system with compressible cup-shaped preformed container bodies. Halliday may disclose identification means for identification of the container by the dispensing apparatus, but Halliday does not teach the skilled person how to obtain the specific container defined by claims 71 and 155. In other words, Halliday fails to cure the deficiencies of Strenger.

Thus, Strenger and Halliday, fail to disclose, teach or suggest the present invention as set forth in independent claims 71 and 155. Reconsideration and withdrawal of the rejection of independent claim 71, and all claims dependent therefrom, are respectfully requested; and consideration and allowance of independent claim 155 is respectfully requested.

Claims 71-76, 84 and 103 are rejected under 35 U.S.C. §103(a) as allegedly being obvious over U.S. Patent No. 5,918,767 to McGill (hereinafter "McGill") in view Halliday. Applicants respectfully traverse.

McGill

In McGill is disclosed a dispensing apparatus for dispensing viscous or semi-solid products from a container. Presumably, these containers are used to dispense ice cream therefrom.

In McGill, Fig. 17 in combination with col, 13, lines 36 - 39 is disclosed a container with two preformed bodies which are heat sealed at the circumferential rims (lips 53 and 54). The dispensing device of McGill has compression means that are used to compress the upper container body (the lid 52) into the lower container body (the base 51). The lower container body (51) has a discharge outlet (57) formed in the center of its bottom (55). The outlet (57) may be provided forming weakened lines (100) radiating from a central position (col. 13, L 55-

58 combined with col, 10 lines 6 - 16). During discharge from the container, pressure of the product will cause the triangular portions between the lines (100) to be bent outwardly from the centre and permit the product to discharge from the container.

This is different from the present invention. In the present invention, the dispensing passage of the substance contained in the container is created by locally rupturing the circumferential sealing seam at the circumferential rim, either at a weakened zone of said sealing seam (claim 71 and claim 155) or at a location of the circumferential sealing seam where the dispensing apparatus has a recess in a covering lid, which leaves only a predetermined portion of the circumferential sealing seam uncovered (claim 103).

Thus, McGill fails to disclose, teach or suggest the present invention.

The deficiencies of Halliday are described above and are not repeated here for the sake of brevity.

#### Combination of McGill and Halliday

Amended claims 71 and 103 as well as newly presented claim 155 are patentably distinct over McGill and Halliday. As described above, McGill discloses a particular container, with a discharge opening in the bottom of the base of the container. McGill does not propose to create a discharge passage at the sealing seam between the base and the lid of the container. Halliday may disclose identification means for identification of the container by the dispensing apparatus, but does not disclose anything with regard to a rupturable circumferential seal as it relates to a totally different cartridge in which a foil is pierced to connect an inlet and an outlet of the cartridge with corresponding parts in the beverage dispensing machine.

Accordingly, independent claims 71, 103 and 155 are patentably distinct over McGill and Halliday. Reconsideration and withdrawal of the rejection of independent claims 71 and 103, and all claims dependent therefrom, are respectfully requested; and consideration and allowance of independent claim 155 is respectfully requested.

Application No.: 10/589,796  
Amendment and Response dated March 2, 2010  
Reply to Office Action of December 4, 2009  
Docket No.: 903-197 PCT/US  
Page 16

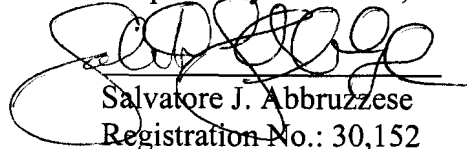
**Summary**

Therefore, Applicants respectfully submit that independent claims 71, 103 and 155, and all claims dependent therefrom, are patentably distinct. This application is believed to be in condition for allowance. Favorable action thereon is therefore respectfully solicited.

Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Salvatore J. Abbruzzese', is written over a horizontal line.

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